Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Joint Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	**CC Docket No. 00-217**
Southwestern Bell Communications Services	)	
Inc. d/b/a Southwestern Bell Long Distance	)	
For Provision of In-Region, InterLATA	)	
Services in Kansas and Oklahoma	)	

DECLARATION OF EVA FETTIG

ON BEHALF OF AT&T CORP.

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In the Matter of	)	
	)	
Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc. d/b/a Southwestern Bell Long Distance For Provision of In-Region, IntetLATA Services in Texas	))))))	**CC Docket No. 00-4**

DECLARATION OF EVA FETTIG
ON BEHALF OF AT&T CORP.

1. My name is Eva Fettig. My business address is 795 Folsom Street, San Francisco, California.

2. I am employed by AT&T as District Manager of Local Infrastructure and Network Expansion, in AT&T's Local Services and Access Management, Pacific/Southwest Region. I am involved in negotiating interconnection agreements and analyzing SBC's (SWBT, Pacific Bell, and Southern New England Telephone) local regulatory filings, including 271 applications. The issues for which I am responsible include the terms and conditions on which AT&T may arrange for interconnection of its local networks with the networks of the SBC operating affiliates.

3. In 1989, I received a Bachelor of Science degree from the University of Vermont, where I majored in marketing, with concentrations in finance and mathematics. In 1994 I received a Master of Business Administration degree from the University of Illinois at Urbana – Champaign, where I concentrated in strategy and marketing. From 1989 through 1993, I was employed by AT&T as a Supervisor in Access Management.

For the next five years, I worked in a variety of product management capacities at SBC/Ameritech (formerly Ameritech). In 1996, I developed Ameritech's UNE – Transport product line. In 1997 and continuing into 1999, I was product manager for UNE – Loops. In that capacity, I was responsible for delivering all pre-ordering, ordering, provisioning, and billing functions to the CLEC market. I rejoined AT&T in 1999, assuming my current position.

I. PURPOSE AND SUMMARY OF AFFIDAVIT

4. The purpose of this affidavit is to address whether SWBT provides interconnection as required by the 1996 Act. It does not. The terms on which SWBT offers interconnection are inconsistent with Section 251(c)(2) of the 1996 Act, and impair AT&T's efforts to provide facilities-based residential service in Oklahoma and Kansas.

5. SWBT claims that it provides interconnection at any technically feasible point, and claims that a CLEC may choose a single, technically feasible point of interconnection ("POI") within a LATA.[1] This claim is false as a matter of law, policy, and economics. SWBT's interconnection policies alternatively: (1) require AT&T (or any CLEC) to establish a minimum of one POI in each local exchange area in which AT&T intends to offer local service, or (2) permit interconnection at one of SWBT's local tandems but require that the CLEC bear all of the costs of transport between a POI and the SWBT end offices located in any other local exchange area served from that POI (in effect, the economic equivalent of extending the CLEC's transport network to a POI

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[1] Brief in Support of Joint Application by Southwestern Bell for Provision of In-Region, InterLATA service in Kansas and Oklahoma, CC Docket No. 00-217 at 76 ("SWBT 271 Application").

in each exchange). Moreover, the CLEC must be willing to pay switched access rates for terminating the traffic that is transported to a different local exchange area than the one where the call originated, whether or not SWBT would treat the call as a local call or a toll call if placed by one of its retail customers. And, even with these discriminatory transport charges, SWBT still has not agreed to permit a CLEC to establish a POI at SWBT's access tandems -- a configuration that AT&T has been unsuccessfully requesting from SWBT for almost a year. Again, these requirements underscore that SWBT's position is not to permit interconnection at a single point, but rather to require arrangements that are the functional and economic equivalent of the "one POI in each exchange" requirement that this Commission has previously rejected. SWBT fails, therefore, to offer interconnection in a manner that is consistent with the 1996 Act and the Commission's rules.

6. SWBT's alternatives offer CLECs no real choice at all. On the one hand, the CLEC may establish a point of interconnection with SWBT in each local exchange area that the CLEC wishes to serve. In this case, the CLEC will have to provide transport facilities into each exchange area, regardless of the efficiency of that arrangement. On the other hand, SWBT claims to permit a CLEC to serve multiple local exchange areas (within a LATA) from a single POI, but only if the CLEC agrees to bear the entire cost of transporting traffic between the POI and the SWBT end offices in the remote exchange area(s), regardless of whether the traffic originates with a SWBT end user or an AT&T end user. Moreover, where the CLEC wishes to complete a call that originates in one local exchange area and terminates in another, the CLEC must pay SWBT intrastate access for those calls -- not reciprocal compensation -- even where those calls remain in a

single local calling area (an area for which SWBT's own retail customers pay local, not intraLATA toll, rates). And for calls that originate and terminate in the same local exchange (i.e., calls that necessarily are local from the retail customer standpoint), but which traverse a POI in a separate exchange area, SWBT will not transport its own originating traffic to the POI, but will require the CLEC to provide or pay for that transport, and SWBT will not transport CLEC-originated traffic from the POI to its own end office switches on the basis of local reciprocal compensation. Rather, the CLEC must provide its own (or third party) transport facilities, or must pay SWBT for a dedicated transport facility or use a chimerical (currently unrated) form of common transport.

7. SWBT's unlawful requirements significantly hamper facilities-based entry into SWBT's local monopolies. AT&T is pursing a variety of entry strategies to provide competitive local service in Oklahoma and Kansas, including facilities-based service through fixed wireless facilities to provide service to residential customers and facilities-based service to small and large business customers either by utilizing its AT&T facilities exclusively or by utilizing two or four-wire loops leased from SWBT. Each of these strategies is significantly hindered by SWBT's unlawful POI/transport requirements. For example, in SWBT exchange areas with one or more end offices that do not subtend a local tandem but do subtend an access tandem in another local exchange, an efficient interconnection option will be for AT&T to establish a POI at the access tandem. The SWBT policies summarized above foreclose this option. As discussed in more detail below, SWBT's unlawful policy will cause AT&T and other

CLECs to incur unnecessary and burdensome expenses and will force inefficient trunking arrangements.

8. As the Commission has repeatedly emphasized, the interconnection provisions of the 1996 Act permit a competing carrier to choose the most efficient points at which to interconnect on the incumbent's network. By requiring CLECs to establish a point of interconnection in each local exchange area (or to establish the functional equivalent of such an arrangement by foisting improper transport and termination costs on CLECs that do not interconnect in each local exchange area), SWBT has usurped CLECs' right to choose the most efficient, technically feasible points of interconnection. This requirement cannot be squared with the competing carriers' right to interconnect at any technically feasible point established in section 251 of the Act. Moreover, the transport cost terms by which SWBT purports to allow a CLEC to utilize a single point of interconnection to exchange traffic for multiple local exchanges within a LATA will require the CLEC to bear all costs of transport on both sides of the POI for both originating and terminating traffic, contrary to the reciprocal compensation requirements set out in section 252(d)(2) and incorporated into checklist item thirteen.

II. THE APPLICABLE LEGAL STANDARD FOR INTERCONNECTION

9. Section 271(c)(2)(B)(i) requires SWBT to demonstrate that it provides interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).[2] Section 251(c)(2), in turn, requires SWBT to provide "interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange

[2] 47 U.S.C. § 271(c)(2)(B)(i) (1999).

service and exchange access." Such interconnection must be provided "at any technically feasible point within the carrier's network."[3]

10. In its *Local Competition Order*, this Commission stated that section 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."[4] In so doing, the Commission recognized that inefficient interconnection arrangements constitute a barrier to entry. It thus found that section 251(c)(2) "lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic."[5]

11. Moreover, the Commission has construed technical feasibility to refer solely to technical or operational concerns, rather than economic, space, site, or billing considerations,[6] stating explicitly: "We find that the 1996 Act bars consideration of costs in determining "technically feasible" points of interconnection or access." [7]

12. The Commission has also identified a minimum list of technically feasible interconnection points that it found "critical to facilitating entry to competing local service providers,"[8] which includes the tandem switch.[9] Further, in order to demonstrate that interconnection at a particular point is *not* technically feasible, the incumbent LEC

[3] 47 U.S.C. § 251(2) (1999).
[4] First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172 (*"Local Competition Order"*).
[5] *Id.* ¶ 209.
[6] *Id.* ¶ 198; 47 C.F.R. § 51.5 (1998).
[7] Id. ¶ 199.
[8] *Id.* ¶ 209.
[9] Id. ¶ 210, 212.

must provide clear and convincing evidence that there are specific, significant and demonstrable network concerns associated with interconnection at that point.[10]

13. Indeed, the Commission has found the right of a competing carrier to choose points of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, sufficiently compelling to intervene in judicial review of arbitrated interconnection agreements. In a challenge to the lawfulness of an interconnection agreement raising the identical issue, the Commission intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires competing carriers to "interconnect in the same local exchange in which it intends to provide local service."[11] There, it wrote "[n]othing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition."[12] Federal courts thus have rejected -- as inconsistent with Section 251(c)(2) -- incumbents' efforts to require competing carriers to establish points of interconnection in each local calling area.[13]

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[10] *Id.* ¶¶ 198, 203.
[11] Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (D.Or. 1998) (No. CV 97-1575-JE).
[12] *Id.* at 20.
[13] *See, e.g., US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998) (US West's contention that the "Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service" is "wrong"); *US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (rejecting U S West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West."); *US West Communication, Inc., v. Arizona Corporation Commission*, 46 F.Supp. 2d 1004, 1021 (D.Ariz. 1999) ("The court also rejects U S West's contention that a CLEC is always required to establish a point of interconnection

14. The Commission expressly reaffirmed these principles in the recent Texas 271 Order. There, the Commission criticized SWBT's requirement that AT&T establish a POI in each local exchange area, stating:

> Section 251, and our implementing rule, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. The incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible. Thus, new entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination. Indeed, section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point in the network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points." [14]

15. Finally, SWBT's asymmetrical requirement that the CLEC bear all of the costs of transporting CLEC customers' calls between a POI and the SWBT end offices and that the CLEC transport calls originated by SWBT customers from SWBT end offices to the POI and from the POI to CLEC's end offices (while refusing to compensate CLECs for any portion of that transport) violates SWBT's obligation to provide reciprocal compensation. See e.g,. 47 C.F.R. § 51.703(b) ("A LEC may not assess

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in each local exchange in which it intends to provide service. That could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than U.S. West"); *U S West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al.*, 31 F. Supp. 2d 839, 852 (D. Or. 1998) ("Although the court agrees with US West that the Act does not define the minimum number of interconnection points, the court also rejects US West's contention that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service. That is not legally required, and the cost might well be prohibitive for prospective customers."); *see also U S West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, 1998 WL 350588, *3 (W.D. Wa. 1998), *aff'd U S West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

[14] Texas 271 Order ¶ 78.

charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network"); see also § 51.709 (requiring proportional rate structure for transport and termination); § 51.711 (requiring symmetrical rates for transport and termination).

16. The law is thus clear. SWBT cannot dictate to AT&T where in SWBT's network AT&T must interconnect. SWBT cannot dictate those interconnection points directly, and it cannot do so indirectly by imposing transport charges that create the same type of economic burden as the requirement that AT&T interconnect at SWBT's desired points. AT&T is entitled to choose the most economically efficient points of interconnection and SWBT may not object absent a showing of technical infeasibility. Incumbents cannot require additional points of interconnection, or impose transport charges in lieu of requiring additional points of interconnection, for the purpose of reducing their own transportation costs and forcing those costs back on the new entrants. Unfortunately, this is exactly what SWBT's interconnection policy does.

III. SWBT'S INTERCONNECTION REQUIREMENTS ARE UNLAWFUL

17. In section 271 proceedings before the OCC and the KCC during the summer of 2000, SWBT initially continued to press its claim that CLECs must establish a POI in every local exchange area, including every local exchange area in which end offices are not homed to a local tandem. However, when confronted with the Commission's clear statement in the Texas 271 Order that "a competitive LEC has the option to interconnect at only one technically feasible point in each LATA," and with state commission determinations that SWBT may not require interconnection at more than one point within a LATA, SWBT changed tactics. SWBT is now seeking to achieve the same effect by foisting onto CLECs all of the costs associated with transport to and from the multiple points of interconnection that it no longer could require CLECs to establish.[15] Below is a summary of the state proceedings in Kansas and Oklahoma on this issue.

Oklahoma

18. In June 2000, SWBT filed a motion to re-open its 271 proceedings before the OCC, and included with its filing a new draft application. With this application, SWBT submitted an Oklahoma 271 Agreement (the "O2A"). With respect to the POI issue, the O2A was identical to the T2A – i.e., it specified that CLECs must interconnect in each SWBT local exchange area in which it provides service. After the Commission issued the Texas 271 Order, in response to a request by the OCC, SWBT filed a supplemental affidavit addressing that Order, as the Oklahoma Commission had requested. In that affidavit SWBT took the position that the Texas 271 Order did not call for any change to the O2A on any issue. The supplemental affidavit did not address the POI issue at all, notwithstanding this Commission's statements that SWBT may not

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[15] To justify this position SWBT has relied on footnote 174 of the *Texas 271 Order*, where this Commission quoted from the interconnection terms of a SWBT/WorldCom agreement, including the term that "[i]f WorldCom desires a single point of interconnection within a LATA, SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by WorldCom, or WorldCom may self-provision, or use a third party's facilities." SWBT now has included corresponding language in the O2A and the K2A, and SWBT infers from footnote 174 this Commission's substantive approval of SWBT's interpretation and proposed application of that language. However, neither SWBT's interpretation nor its application of these transport charge terms were examined in the *Texas 271 Order*. As the discussion of Kansas and Oklahoma proceedings below will show, SWBT plans to apply the words it has taken from the Texas WorldCom agreement in a way that practically negates the CLEC's option to interconnect at a single point within a LATA. The Commission should reject SWBT's attempt to eviscerate the Commission's ruling on the POI issue

dictate any points of interconnection unless it can prove that interconnection at a requested point is technically infeasible.[16] In response to AT&T's contrary showing, however, SWBT submitted testimony that included a proposed O2A term that purports to permit CLECs to interconnect physically at a single point per LATA. See Sparks Rebuttal Testimony, annexed hereto in relevant part as Attachment 1.[17] However, SWBT interprets this term as allowing it to shift all costs of transport between the POI and SWBT's end offices onto the CLECs, both for originating and terminating traffic.

19. In its initial 271 Order issued September 28, 2000, the OCC rejected the language that SWBT included in the Sparks Rebuttal testimony, because the "proposed attachment . . . improperly shifts the costs of transport and termination on to the CLEC, in violation of the federal Act." OCC Cause No. PUD 970000560, Order No. 445180 at 164, annexed hereto in relevant part as Attachment 2. Accordingly, the Oklahoma Commission directed, as one of several conditions to that Commission's approval of the O2A and to a favorable recommendation on SWBT's 271 application, that SWBT's

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through an opportunistic and expansive construction of the WorldCom agreement language referenced in footnote 174.

[16] *See* Supplemental Direct Testimony of James Jones at 3 ("SWBT does not believe its application and supporting materials in this Cause require any modification based upon the SBC Texas Order.") (August 4, 2000).

[17] While it is true that AT&T agreed to language in its original Oklahoma interconnection agreement with SBC that permitted SBC to require a point of interconnection in every local exchange area, that language was negotiated well before AT&T had developed a facilities based strategy and acquired strategic assets (including TCG, TCI and MediaOne) needed to implement that strategy. AT&T is now arbitrating this issue in Oklahoma. Even if AT&T wins this issue after a protracted arbitration, however, it is harmed in the meantime. Unlike Texas, there are no CLEC agreements in place that permit interconnection at a single point per LATA. Moreover, now that SWBT has revealed its interpretation of the compensation arrangements that correspond to interconnection at a single point per LATA, it is clear even if other interconnection agreements permitted a single point per LATA, they would not comply with the Act's requirements.

newly proposed O2A terms for network interconnection architecture (Attachment 11), including the POI language set forth in the Sparks rebuttal testimony, be replaced with AT&T's proposed O2A Attachment 11 (a copy of which is annexed hereto as Attachment 3).

20. A week later, on October 4, 2000, the Oklahoma Commission abruptly reversed course, issuing a nunc pro tunc order that reneged on the previous ruling in favor of AT&T's interconnection language and instead approved the SWBT POI language that the Commission had earlier rejected. OCC Cause No. PUD 970000560, Order No. 445180 (copy annexed as Attachment 4). The Oklahoma Commission did not offer any explanation for its about face, nor had any party filed a motion for reconsideration of the initial ruling. AT&T's request that the Commission's nunc pro tunc ruling be set aside was denied, following an October 18, 2000 hearing before only two of the three Commissioners. *See* OCC Cause No. PUD 970000560, AT&T Communications of the Southwest, Inc.'s Motion To Reconsider Order Nunc Pro Tunc (October 16, 2000) and Order No. 445855 (October 18, 2000), annexed as Attachments 5 and 6, respectively. In denying AT&T's motion, however, the Commission directed its staff to schedule a technical conference for the following week regarding the O2A. When the parties asked to clarify the purpose of the technical conference, the Commission indicated that it wanted the parties to address the POI issues.

21. The technical conference, which I attended, was held on October 24, 2000. SWBT brought a number of call flow diagrams to the workshop that outlined in detail SWBT's expectations regarding the transport and termination costs that would be borne by the CLECs, including scenarios in which traffic is exchanged within the exchange

area where the POI is located and others that would apply to CLECs who elect not to establish a POI in every local exchange area. Significantly, none of the scenarios depicted the option of interconnecting at SWBT's access tandems. SWBT's call flow diagrams are annexed hereto as Attachment 7.[18]

22. Under the legal framework outlined earlier, each party should be financially responsible for providing the necessary equipment and facilities charges on its side of the POI,[19] i.e., bearing the cost of delivering its originating local traffic to the POI and transporting and terminating the local traffic it receives at the POI, for which it should receive reciprocal compensation. SWBT's policies, however, do not provide for compensation to the CLEC for the use of any of the transport facilities that the CLEC has established on either side of the POI. Moreover, where a single POI serves multiple local exchange areas within a LATA, SWBT's policies unlawfully shift to the CLEC the entire financial burden for transporting traffic between the POI and SWBT's end offices, both for CLEC-originated and SWBT-originated traffic. SWBT will not transport CLEC-originated traffic at local compensation rates. Rather, SWBT imposes intrastate access charges, rather than reciprocal compensation, when SWBT transports CLEC-originated local traffic from the POI to a SWBT end office in a remote exchange, and it requires the CLEC to pay for a dedicated transport facility, or to use a currently unpriced version of

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[18] Oklahoma Commission Staff subsequently filed its Staff Report On Technical Conference As Required By Order No. 445855 (October 26, 2000), copy annexed as Attachment 8. AT&T provided additional detail regarding the conference in AT&T Communications of the Southwest, Inc. Response To Staff Report On 10/24/00 Technical Conference (October 31, 2000), annexed as Attachment 9.

[19] Alternatively, the parties could pay a proportional share of the facilities on each side of the POI based on the amount of traffic that each party originates. This is the solution that the Texas PUC imposed in connection with AT&T 's recent arbitration on this issue in

common transport, to transport calls that originate and terminate within the same exchange area but traverse a POI in a separate exchange.

23. SWBT's unlawful shifting of transport costs is best illustrated by describing some of the scenarios that were discussed at the technical conference.

Interconnection Within a Single Exchange

Scenario 1: CLEC establishes a POI at a SWBT local tandem, and is not collocated in any SWBT end office in the local exchange area served by the tandem. CLEC customer A originates call to SWBT customer C within the same local exchange area.[20]

- SWBT expects the CLEC not only to pay for the facilities between the CLEC end office and the SWBT POI at the tandem (which AT&T would not take issue with, if the O2A otherwise provided for equitable allocation of interconnection facilities charges), but also for the facilities between the SWBT POI and the SWBT end office. For the latter, the CLEC must pay tandem transport on a per minute of use basis at reciprocal compensation levels. The CLEC would also be required to pay reciprocal compensation rates for tandem switching (at the POI) and end office switching.

Scenario 1A: Same as above except SWBT customer C originates call to SWBT customer A.

- SWBT expects the CLEC to pay for 100% of the facilities that would carry the traffic from POI to the CLEC end office, even though SWBT's customer derives the benefit of using those facilities. In stark contrast to the scenario in which the AT&T customer initiates the call, where the SWBT customer originates the call, SWBT would not pay any transport charge (as part of local reciprocal compensation or otherwise) to the CLEC for the connection between the POI and the CLEC switch. SWBT would only be required to pay the CLEC the end office switching charge for terminating the call at the CLEC's switch.

Texas. See TPUC Docket No. 22315, Revised Arbitration Award 13 (September 27, 2000).

[20] This scenario is depicted in Exhibit 7 as Example No. 1.

Scenarios 1 and 1A illustrate a significant gap in SWBT's interconnection terms, even when the POI is located in the same local exchange area in which the CLEC is offering service. The O2A does not require the parties to share equitably in the costs of the facilities that are located on either side of the POI by paying for those facilities in proportion to the amount of traffic that each party places over the facility. Moreover, while requiring AT&T to pay SWBT (under this scenario, through local reciprocal compensation) for the facilities between the SWBT end office and the POI (in addition to absorbing all of the costs associated with the facilities between the CLEC end office and the POI), SWBT does not intend to pay the CLEC reciprocal compensation for terminating SWBT-originated calls over the CLEC's facilities. Thus, the CLEC is left to bear the full cost of interconnection facilities that benefit both parties. *See* AT&T Response to Staff Report On 10/24/00 Technical Conference at section 2 (Exhibit 9).

Interconnection at one POI Serving Multiple Local Exchanges

Scenario 2: CLEC establishes a POI at a SWBT tandem, and is not collocated in any SWBT end office in the local exchange areas served by the tandem. CLEC customer A originates call within Local Exchange Area X to SWBT customer B within Local Exchange Area Y. Both local exchange areas are located within a single SWBT local calling area; in other words, for its own retail customers, SWBT rates calls from Local Exchange Area X to Local Exchange Area Y as local, not intraLATA toll, calls.

- SWBT expects the CLEC not only to pay for the facilities between the CLEC end office and the SWBT POI at the tandem (which AT&T would not take issue with, if the O2A otherwise provided for equitable allocation of interconnection facilities charges), but also for the facilities between the SWBT POI and the SWBT end office. Moreover, despite the fact that the call terminates within the same SWBT local calling area in which the call originates, SWBT has taken the position that reciprocal compensation rates do not apply. Thus, if the CLEC does not wish to self-provision facilities or lease facilities from a third party (i.e., establish a POI in the local exchange area to which the traffic is destined), the CLEC has to pay for the transport between the tandem and the SWBT end office at switched access levels, as well as paying intrastate access charges for tandem and local switching.

Scenario 2A: Same as above, except SWBT customer B in Local Exchange Area Y originates call to CLEC customer A in Local Exchange Area X.

- SWBT expects the CLEC to pay for 100% of the facilities that would carry the traffic from the POI to the CLEC end office, even though SWBT's customer derives the benefit of using those facilities. In stark contrast to the scenario in which the AT&T customer initiates the call, where the SWBT customer initiates the call to the CLEC's customer, SWBT would not pay transport charges to the CLEC (at either reciprocal compensation or switched access levels) for the connection between the POI and the CLEC switch. SWBT would only pay the CLEC switched access end office switching rates.

SWBT's position under this scenario is absurd. There is no reason why CLECs should be forced to pay SWBT switched access rates for terminating calls that are local calls for SWBT's own customers. SWBT has offered no justification for this unlawful position.[21]

Effect of POI Established in Separate Exchange On Calls that are Routed Within the Same Local Exchange Area

Scenario 3: CLEC establishes a POI at a SWBT local tandem that serves multiple exchange areas. CLEC Customer A calls SWBT Customer C within the same local exchange area, or vice versa.[22]

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[21] These scenarios are depicted in Exhibit 7 as Example Nos. 2 and 3, and also would apply where the call is rated as an intraLATA toll call in SWBT's retail operations. While one of SWBT's witnesses indicated at the Oklahoma technical conference that it would apply reciprocal compensation rates for calls within *mandatory* local calling areas in Oklahoma, the O2A does not provide for that result explicitly, nor does it address local calls across optional calling areas made up of multiple local exchanges. Moreover, SWBT's witnesses specifically declined to make changes to the O2A that would make this clarifying change, which obviously casts doubt on SWBT's assertion.

> SWBT has taken the position that the CLEC must either build or lease facilities between the POI and the SWBT end office, i.e. establish a separate POI in the local exchange area where the calling and called parties are located, or pay for the transport between the POI and the SWBT end office by leasing a dedicated transport facility at UNE rates or paying some unspecified rate for common transport, *even where SWBT's end user initiates the call.*[23]

SWBT's requirements in this scenario are improper in at least two ways. First, they require the CLEC to bear the cost of transporting the traffic originated by SWBT's own customers, between the SWBT originating end office and the POI. SWBT escapes any obligation to transport its own traffic to the POI, or to any point beyond its own originating end office. Second, SWBT will not terminate CLEC-originated traffic that is handed off at the POI at local reciprocal compensation rates. Instead, the CLEC must actually establish a separate POI in the exchange where SWBT's terminating end office is located (by self-provisioning or leasing third party facilities), or it must lease a dedicated transport facility. The only other alternative – common transport – is a hypothetical one, with rates that are yet to be determined and cannot be considered in these proceedings.

The Impact of Collocation

Scenario 4: CLEC is collocated in a SWBT end office in the local exchange area where the CLEC is offering service. A CLEC customer calls a SWBT customer.

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[22] These scenarios are depicted in Exhibit 7 as Example Nos. 4 and 5.

[23] Although the O2A provides UNE rates for common transport and provides that "Common Transport will also permit CLEC to utilize SWBT's common network between a SWBT tandem and a SWBT end office," O2A Attachment 6, § 8.1.2, SWBT insisted at the recent Oklahoma technical conference that the version of common transport that it would make available between a POI in one local exchange area and end offices in another would be priced differently and that establishing a price for this version of common transport would require negotiation or, if necessary, arbitration.

- Under this scenario, the POI is established at the collocation cage in the SWBT end office. Thus, where a CLEC customer calls a SWBT customer, the CLEC would have to pay for the transport between the CLEC end office and the SWBT end office by provisioning its own facilities. Not only does this scenario unnecessarily burden the CLEC with unwarranted costs, but, by requiring the CLEC to provision its own facilities to its collocated space, SWBT's policy also forces the CLEC to waste valuable collocation space on SWBT's unlawful interconnection requirement.

Scenario 4A: Same as above, except a SWBT customer calls a CLEC customer.

- SWBT calls would ride the CLEC facilities that have been interconnected with SWBT's network at the SWBT end office in which the CLEC is collocated. SWBT does not propose to compensate the CLEC for use of those facilities when SWBT customers use them to carry calls originated by them to the CLEC's customers. Moreover, SWBT would not compensate the CLEC for use of the CLEC's facilities between the POI and the CLEC's end office.

This scenario illustrates that SWBT's interconnection requirements will operate to penalize a CLEC who collocates at a large number of SWBT end offices, because the CLEC will bear the entire cost of transport between its own end offices and its collocation areas in SWBT end offices. Indeed, SWBT acknowledged at the Oklahoma technical conference that the O2A probably would not be the interconnection agreement of choice for a CLEC with extensive collocation arrangements.

24. Finally, notably absent from the scenarios that SWBT offered at the technical conference was any configuration in which a CLEC would interconnect at a SWBT access tandem in order to reach the 30-35% of SWBT end offices (in its five-state region) that are not homed to a local tandem – a configuration that AT&T has been requesting since December 1999. Instead, SWBT has suggested that AT&T either lease or build our own facilities to the end offices in such local exchange areas or pay switched access rates for delivering traffic to that local exchange area from a remotely located

local tandem. But nowhere has SWBT demonstrated that interconnection at the access tandems is technically infeasible.[24] Indeed, as the Commission has previously found, such interconnection is technically feasible,[25] and SWBT's refusal to offer it at reciprocal compensation rates demonstrates its noncompliance with this checklist item.

Summary: Oklahoma POI Terms

25. SWBT's presentation at the Oklahoma technical conference makes explicit that the POI terms of the O2A are the functional and economic equivalent of the position that the Commission rejected in its Texas 271 order, and that federal district courts also have rejected. In the most simple scenario (1 and 1A), the O2A does not require SWBT to equitably share the cost of the interconnection facilities between the CLEC's network and SWBT's network, though both parties benefit from those facilities. For calls from one local exchange to another within a LATA (scenario 2), the O2A does not require SWBT to treat all local calling scopes as a single exchange for purposes of reciprocal compensation. For calls within one local exchange area that traverse a POI in a separate exchange area (scenario 3), SWBT requires the CLEC who wishes to use that POI to transport SWBT-originated traffic on SWBT's side of the POI, and requires the CLEC to lease dedicated transport facilities on SWBT's side of the POI for terminating CLEC originated traffic (common transport is nominally available, but not priced). And under any of these scenarios, a CLEC's choice to collocate at a SWBT end office results, under SWBT's interconnection policies, in the shifting of additional transport costs and burdens to the CLEC (scenario 4). Under all these scenarios, SWBT will not pay reciprocal compensation transport charges to the CLEC for the transport provided

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[24] See also Texas and Kansas Arbitration awards, discussed *infra* ¶ 34.

between the POI and the CLEC's terminating end office, whether the CLEC is collocated or not. Lastly, SWBT has not established that it offers interconnection at its access tandems.

Kansas

26. Following this Commission's 271 decision in Texas, AT&T(TCG) and SWBT entered into another round of interconnection negotiations and arbitration in Kansas. There, despite the FCC's ruling, SWBT continued to press its position that CLECs must interconnect in every local exchange area. The arbitrator, however, cited the Texas 271 Order for the proposition that a CLEC may interconnect with the incumbent LEC at any technically feasible point and may designate a single interconnection point within a LATA. KCC Docket No. 00-TCGT-571-ARB, Arbitrator's Order 5: Decision at 3-4 (August 7, 2000), copy annexed as Attachment 10. In particular, the arbitrator granted AT&T's request that it be "permitted to interconnect for the purpose of establishing its POI at SWBT's local and access tandems." *Id.* at 4.[26] The arbitrator also found that SWBT would be required to establish its POI at AT&T's switch. *Id.*

27. AT&T presented its objections to SWBT's requirement of a single POI in each local exchange area during the renewed 271 proceedings in Kansas this summer. *See* Direct Testimony of Eva Fettig (regarding interconnection) (July 19, 2000). In reply, prior to issuance of the arbitration decision, SWBT proposed an amendment to the K2A equivalent to the one that it has made to the O2A, purporting to offer a CLEC the option

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[25] See *Local Competition Order* at ¶¶ 210, 212.

of a single point of interconnection within a LATA, but with the same language regarding transport that SWBT has interpreted in Oklahoma to authorize the extraordinary transport charges described under the several scenarios above. Sparks Reply Aff. ¶¶ 5-6 (August 2, 2000). Kansas Staff recommended to the KCC that this language should resolve CLEC concerns regarding the POI issue, but did so on the basis of the reference to this language from the WorldCom agreement in the *Texas 271 Order* and without any consideration of SWBT's proposed application of that language or the costs imposed on CLECs under the scenarios described above. *See* KCC Staff Report at 6 (discussion of compliance with checklist item 1).

28. The clear implication of the Kansas arbitration should be to require each party to bear financial and engineering responsibility for delivering its originating traffic to the POI. It also should follow that each party should terminate the other's traffic within local calling areas on the basis of local reciprocal compensation. However, in light of SWBT's aggressive assertion in the Oklahoma 271 proceedings (and in Missouri and Arkansas even more recently) of its right to assess dedicated or common transport charges for transport on SWBT's side of the POI there is every likelihood that SWBT's position on POI remains no different in Kansas than the positions described above for Oklahoma. Moreover, the Arbitrator did not address the question (because it was not before him) whether AT&T must pay access charges for calls that transverse two local exchange areas but remain within a single local calling area. Nor did the Kansas Commission require any change to sections 1.1 – 1.3 of Attachment 11 of the K2A,

[26] The arbitrator also found that AT&T's Kansas City switch functioned as both an end office and tandem switch and should be considered a tandem switch for interconnection and reciprocal compensation purposes. *Id.* at 7, 24-25.

which contains the same language as the O2A, and which CLECs must assume SWBT will interpret with the same results as described in the scenarios above. Accordingly, the terms on which SWBT offers interconnection in Kansas are subject to the same deficiencies as the terms that it offers in Oklahoma.

IV. SWBT HAS PRESENTED NO TECHNICAL JUSTIFICATION FOR ITS UNLAWFUL POLICIES

29. In response to AT&T's complaints about its onerous requirements, SWBT has attempted to justify its policy based on the network architecture it has deployed in the southwestern states.

30. This network architecture utilizes end office switches, local tandem switches, access tandem switches, and combination access/local tandem switches. In the southwestern states, SWBT uses some tandems to switch only local traffic among the end offices that subtend that tandem (a "local tandem"), and uses other tandems to switch intraLATA and interLATA toll traffic (an "access tandem"). This architecture is described in the O2A.[27] In contrast, other BOCs, most notably SWBT's affiliates Pacific Bell and Ameritech and SNET, have deployed tandem switches that route both local and toll traffic, and permit CLECs to interconnect at the tandem switches in those regions.[28]

[27] O2A, Attachment 11, Appendix ITR (Interconnection Trunking Requirements), at 2.1.2; *see also* SBC-13 State Generic Interconnection Agreement, Appendix ITR (Interconnection Trunking Requirements), at 4.1 ("SBC-13STATE deploys in its network Tandems that switch local only traffic (local Tandem SBC-SWBT only), Tandems that switch IntraLATA and InterLATA traffic (Access Tandem) and Tandems that switch both local and IntraLATA/InterLATA traffic (local/Access Tandem).") ("SBC-13 State Agreement").

[28] *See* SBC-13 State Agreement, App. NIM, at 2.1.

31. In California, Nevada, and the former Ameritech states, CLECs may at least interconnect at the tandems within a LATA. There is thus no requirement that competing carriers establish an interconnection point in each local exchange area.[29]

32. SBC claims that the differing policies among the various SBC territories is somehow justified by differing state regulatory calling scope requirements. SWBT is wrong. All states -- including those in which SBC does not impose the POI requirement at issue here --identify geographic areas within which calls are charged at local rates. The identification of such areas, however, has no bearing on the CLEC's right to choose the most efficient, technically feasible points of interconnection.

33. SWBT also has attempted to justify its position on the ground that it routes its own traffic in the affected local exchange areas via direct trunk groups to each end office.[30] But SWBT's purported justification misses the mark. Because of its historical position as the monopoly provider of local service, SWBT has sufficient traffic to warrant direct trunking to every end office within its local calling areas. AT&T and other new

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[29] This differing treatment is also reflected in the trunking requirements set forth in the SBC-13 State Agreement. In describing the interconnection trunking in each local exchange area in the SWBT region, the agreement provides that "[a] local trunk group shall be established from CLEC switch to each SBC-SWBT . . . End Office in a local exchange area that has no local Tandem."[29] SBC-13 State Agreement, App. ITR, at 5.2.3; *See also* SBC-13 State Agreement, App. ITR, at 4.4 Finally, the agreement makes clear that no tandem switching will be performed by the End Office switch. SBC-13 State Agreement, App. ITR, at 4.5.[29]

[30] SWBT may also argue that its requirement that CLECs establish a POI in each local exchange area is necessary to avoid SWBT having to pay "unreasonable" reciprocal compensation rates, particularly to CLECs terminating traffic to internet services providers. AT&T readily agrees that reasonable reciprocal compensation arrangements are necessary. Concerns about reciprocal compensation, however, cannot justify unlawful interconnection requirements. And, to the extent SWBT's interconnection regime is premised on its desire to avoid costs, such concerns have no place in determining technically feasible points of interconnection. *See Local Competition Order* ¶ 199 ("We find that the 1996 Act bars consideration of costs in determining 'technically feasible' points of interconnection or access.").

entrants clearly do not have sufficient volumes of traffic to economically utilize trunk groups to each end office within an exchange. Indeed, this requirement results in needless and wasteful deployment of underutilized trunk groups.

34. Two state commissions have specifically confirmed that SWBT's refusal to permit interconnection at its access tandems is unlawful. Subsequent to the release of the Commission's Texas 271 order, a TPUC arbitrator found that SWBT had not demonstrated that AT&T's proposal to interconnect at the access tandems was technically infeasible, and therefore required SWBT to permit such interconnection. See TPUC Docket No. 22315, Revised Arbitration Award 7-9 (September 27, 2000). Similarly, as discussed above, the Arbitrator in the Kansas arbitration found that AT&T should be permitted to interconnect at SWBT's access tandems because SWBT had not asserted, much less proven, that interconnection there is technically infeasible. KCC Docket No. 00-TCGT-571-ARB, Arbitrator's Order 5 at 4 (August 7, 2000).

35. In sum, SWBT has not provided facts, nor could it, to justify either a requirement that CLECs interconnect in each local exchange where they offer service nor that they pay transport costs equivalent to establishing interconnection in each local exchange.

V. SWBT'S VIOLATIONS OF ITS INTERCONNECTION OBLIGATIONS HAVE SERIOUS COMPETITIVE CONSEQUENCES

36. SWBT's failure to comply with its interconnection obligations, as described above, is not merely unlawful, but also has serious competitive consequences. SWBT's violations effectively shift the burden of all interconnection costs on the CLEC, even for calls originated by SWBT's customers. Moreover, where the CLEC is

collocated in a SWBT end office, the CLEC is required to provision or lease its own facilities to the collocated space (thus effectively establishing the POI at that location), which forces the CLEC to waste valuable collocation space to comply with SWBT's unlawful policy. And, as demonstrated in the affidavit of Sarah DeYoung that was filed in connection with SWBT's 271 application for Texas, SWBT's interconnection policies have the effect of delaying market entry. CC Docket No. 00-4, Declaration of Sarah DeYoung (copy annexed as Attachment 11). As shown therein, SWBT cannot readily identify which of its end offices do not subtend a local tandem.[31] Indeed, despite repeated requests, SWBT still has not furnished to AT&T a list of such end offices in Oklahoma. Thus, often CLECs cannot determine what the interconnection requirements are in a given area – or the costs associated with such interconnection requirements -- until they are implementing market entry plans there. In Texas, this resulted in a delay of several months and the imposition of unforeseen costs with respect to a planned market entry for cable telephony in the Dallas area. *Id.* ¶¶ 23-26.

37. Similar delays and difficulties in determining market entry costs can be expected in Kansas and Oklahoma as AT&T proceeds with its market entries in those states. SBC's unlawful interconnection policies directly threaten the AT&T entry strategies described in paragraph 7 above. SWBT's interconnection policies place substantial costs on AT&T (and any CLEC seeking to provide facilities-based service) that SWBT does not incur for handling local traffic. For example, by insisting that CLECs pay intrastate access charges for calls within SWBT's local calling area, SWBT's

[31] SWBT still has not provided AT&T with a list of end offices that do not home to a local tandem, despite committing to do so at the October 24, 2000 technical conference in Oklahoma.

policies will severely limit CLECs' ability to offer competitive local rates to customers for calls within a comparable local calling area. By foisting the cost of transporting SWBT's own originating traffic from its end offices to the POI as a condition to a CLEC using a single POI to serve multiple exchanges, SWBT reduces its own costs while robbing the CLEC's network configuration of its desired efficiency. All the added costs and uncertainty that SWBT's terms impose on CLECs significantly impede facilities-based entry.

CONCLUSION

38. SWBT's requirements in Oklahoma and Kansas usurp AT&T's right to determine the most efficient and economical points of interconnection between its local network and SWBT's. Those requirements effectively reimpose SWBT's unlawful requirement that CLECs establish a point of interconnnection in each local exchange. SWBT's late amendments to the O2A and K2A, purporting to offer CLECs the option to interconnect at any technically feasible single point within a LATA, do not cure the deficiency in SWBT's interconnection terms. On the contrary, those terms shift transport costs that SWBT should bear, on its side of the POI, to CLECs. SWBT offers CLECs only the choice between building inefficient trunks to each local exchange area, or paying SWBT excessive transport charges in lieu of providing such trunks. At the same time, SWBT relieves itself of the obligation to bear the cost of delivering its own traffic to the point of interconnection where it hands that traffic to the CLEC. The terms on which SWBT offers interconnection in Kansas and Oklahoma do not satisfy checklist item one; moreover, by imposing transport charges on CLECs for calls originated by SWBT customers to CLEC customers, and by refusing to pay reciprocal compensation for

transport provided by CLECs to terminate those calls, SWBT violates checklist item thirteen.

Eva Fettig